

APPEAL NO. 030612
FILED APRIL 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from July 18 through August 25, 2002. The appellant (self-insured) appeals, arguing that the claimant was not in the course and scope of her employment at the time of the injury and that she did not have disability. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The compensability determination is based on the access doctrine, which provides an exception to the general rule that injuries occurring while going to or coming from the place of employment are not compensable. Texas Workers' Compensation Commission Appeal No. 950156, decided March 9, 1995, cited Standard Fire Insurance Co. v. Rodriguez, 645 S.W.2d 534, 538 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.) for the proposition that:

If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect, a part of the employer's premises, the injury is one arising out of and in the course of the employment as though it had happened while the employee was engaged in his work at the place of its performance.

The self-insured relies on Texas Workers' Compensation Insurance Company v. Matthews, 519 S.W.2d 630 (Tex. 1974), and the discussion therein of Kelty v. Travelers Ins. Co. 391 S.W.2d 558 (Tex. Civ. App.-Dallas 1965, writ ref'd n.r.e.) to argue that, since the employer did not own, control, or maintain the sidewalk adjacent to the employer, the access doctrine does not apply. The court in Matthews referenced cases forming the two-prong test for determining the applicability of the access doctrine, which provides:

1. [Whether] the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work; and,

2. Where such access route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises.

The hearing officer found that if the sidewalk where the claimant tripped and fell was, if not on the premises of the employer, "it was in such proximity and relation thereto as to be in practical effect a part of the [e]mployer's premises, and [the claimant] had the [e]mployer's implied consent to use the rear entrance of the building."

Whether the access doctrine applies is generally a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In view of the evidence presented in this case, we cannot conclude that the hearing officer's compensability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant had disability from July 18 through August 25, 2002. Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Whether the claimant had disability for the period of time in question was question of fact for the hearing officer to resolve. Given the claimant's testimony and medical evidence in this case, we perceive no error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY) TEXAS (ZIP CODE).

Chris Cowan
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge